

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
APPELLATE DIVISION

VANESSA TRIPPETT,)
) D.C. CRIM. APP. NO. 2003/031
 Appellant,)
)
 v.)
)
 GOVERNMENT OF THE VIRGIN ISLANDS,)
)
 Appellee.)
)

On Appeal from the Territorial Court of the Virgin Islands

Considered: September 17, 2004

Filed: December 7, 2004

BEFORE : **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **IVE A. SWAN**, Judge of the Territorial Court, Sitting by Designation.

Attorneys:

Darwin Carr, Esq.
Attorney for Appellant

Matthew Phelan, AAG
Attorney for Appellee.

MEMORANDUM OPINION

PER CURIAM.

Vanessa Trippett ["Trippett"] appeals the trial court's finding that she operated her vehicle in a negligent manner, asserting there was insufficient evidence of negligence. For the reasons which follow, we will affirm.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On the night of August 8, 2003, Trippett was driving on the South Shore Road when her vehicle collided head-on with another vehicle driven by Nancy Fisk Martin ["Martin"]. (See Br. of Appellant, Trial Tr. ["Tr."] at 3-6). According to Trippett's version of events presented at trial, the vehicle driven by Martin swerved out of control after hitting a telephone pole, thereby colliding with Trippett's vehicle. (Tr. at 25-32). Martin, however, maintained that Trippett crossed the double yellow line into her lane of travel, striking her. Following an investigation, police cited Trippett for failing to maintain control of her vehicle and failing to stay in her left lane. Following a bench trial, in which Trippett appeared *pro se*, the court found Trippett guilty of negligent driving. This appeal followed.

II. DISCUSSION

A. Jurisdiction and Standard of Review

This Court has jurisdiction to review the trial court's determinations in criminal cases in which the defendant has been convicted, other than on a guilty plea. See V.I. CODE ANN. tit 4,

§ 33; Revised Organic Act of 1954 § 23A.¹ A trial court's finding of fact is reviewed for clear error, with due regard afforded the trial court's opportunity to judge the credibility of witnesses. See *Bryan v. Government of the V.I.*, 150 F.Supp.2d 821, 827 (D.V.I. App. Div. 2001); *Poleon v. Government of the V.I.*, 184 F. Supp. 2d 428 (D.V.I. App. Div. 2002). The court's factual findings are clearly erroneous if it is evident that "the factfinder in the first instance made a mistake in concluding that a fact had been proven under the applicable standard of proof," or where such findings: 1) are unsupported by substantial evidence; 2) lack adequate evidentiary support in the record; 3) are against the clear weight of the evidence; or 4) where the trial court has misapprehended the weight of the evidence. See *Bryan*, 150 F. Supp. 2d at 827(citing *Davin v. U.S. Dep't. of Justice*, 60 F.3d 1043, 1049 (3d Cir. 1995)). We afford plenary review to questions of law. See *Rivera v. Government of V.I.*, 37 V.I. 68, 73 (D.V.I. App. Div. 1997).

In reviewing challenges to the sufficiency of the evidence to support a conviction, we must determine whether, viewing the evidence in the light most favorable to the government, a

¹ 48 U.S.C. § 1613a. The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2003), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp.2003) (preceding V.I. CODE ANN . tit. 1).

reasonable trier of fact could find the defendant guilty beyond a reasonable doubt of every element of the offense. See *Georges v. Government of the Virgin Islands*, 119 F.Supp.2d 514, 523 (D.V.I. App. Div. 2000).

B. Finding of Negligence

Appellant was convicted under title 20, section 503 of the Virgin Islands Code, which makes it unlawful "for any person to operate a motor vehicle in a negligent manner over and along the public highways of this Territory." 20 V.I.C. § 503 (1995). For purposes of that statute, "to operate in a negligent manner" is defined as "the operation of a vehicle upon the public highways of this Territory in such a manner as to endanger or be likely to endanger any person or property." *Id.* Therefore, before determining guilt under this section, the court must first satisfy itself beyond a reasonable doubt that the appellant operated her vehicle on a public highway and did so in a manner which endangered or was likely to endanger a person or property. See *Poleon*, 184 F. Supp. 2d at 433. The trial court's finding in that regard is fully supported on the record.

Trippett initially asserted she did not cross into Martin's eastbound lane. Rather, she said the accident resulted after Martin swerved toward her, causing her to spin out of control. [Tr. at 25-32]. However, questioned on cross examination about

the trail of skid marks from her lane to the point of impact in Martin's lane, Trippett conceded she may have crossed the yellow line prior to the impact:

- Q So, you didn't cross over on to the other lane at all?
- A I might have; I might have crossed slightly over; I might have for trying to avoid them. I might have.
- Q Now, did you observe whether or not there was solid yellow lines that divided the two lanes? [sic].
- A Yes.
- Q And - All right. You said you may have crossed over those solid yellow lines?
- A That's because at the angle they were coming at me, if I had went over and they were coming that way, they would have hit me in the side. To me, at the time, it seemed that was the only way that I could have went - because they were coming into my lane.

(Tr. at 29-30). Trippett maintained, however, that Martin's swerving following a collision with a telephone pole caused her to move into the westbound lane. Trippett additionally asserted that the cause of the accident was Martin's initial collision with a telephone pole. Trippett never testified that she witnessed such a collision, however. Rather, her assertion was based on her later observation of paint on a nearby pole and glass which appeared to come from the light of a vehicle.

Martin gave a different version of events. Martin testified she was traveling in the westbound lane on South Shore Road when she saw several vehicles approaching her from the opposite

direction. (Tr. At 6-7). Trippett's vehicle was the first of those vehicles. As Trippett's vehicle came within approximately three car lengths from her, Martin said that vehicle crossed over the yellow line into the westbound lane in which she was traveling, and an impact immediately followed. (Tr. at 7). However, Martin denied ever having hit a telephone pole. (Tr. at 11).

The traffic investigation supported Martin's version of events and concluded that Trippett's negligence in crossing into the lane of oncoming traffic had caused the accident. At trial, the traffic investigator cited the following circumstances that led to that determination: the accident occurred halfway into Martin's lane of travel; there were 33 feet of skid marks leading from Trippett's lane of travel to the point of impact in Martin's lane; and the right tire skidmark from Trippett's eastbound vehicle started at the double yellow line and continued into the westbound lane. (Tr. at 12-18). Additionally, the traffic investigator testified he investigated Trippett's allegation that Martin had struck a telephone pole prior to the collision. However, police concluded the physical evidence did not support that theory and discounted it as the cause of the accident. In addition to the evidence noted above, police found no damage to Martin's vehicle consistent with having struck a telephone pole.

[Tr. at 20]. Specifically, police noted that glass from a broken light was found around the pole; however, Martin's vehicle was not missing a light; the paint on the pole did not match that of Martin's vehicle; the paint on the pole was four feet high, which police say was not consistent with the markings on Martin's vehicle; and the location at which the vehicles came to rest was inconsistent with the location of the pole and Trippett's version of events. [Tr. at 20-21, 34-36]. The government entered into evidence photographs depicting the damage to the vehicles and reflecting the scene of the collision. [Tr. at 35]. Finally, the government established that Trippett was traveling on the eastbound lane of a public roadway which was marked with a double yellow line, and that she moved into the westbound lane into oncoming traffic. Viewed in the light most favorable to the government, this was sufficient evidence from which the trial court could have determined Trippett's guilt beyond a reasonable doubt. *See Durham Life Ins. Co v. Evans*, 166 F.3d 139, 147 (3d Cir. 1999)(citations omitted).

C. Believability of Witnesses' Testimony

Appellant's challenges largely surround the believability of testimony of Martin and the traffic investigator, and the police officer's determination that the cause of the accident was Trippett's negligence and not a prior collision with a telephone

pole. She contends the testimony of both witnesses was not believable and that the police officer's investigation was incomplete. These challenges require us to inquire into the witnesses' credibility. Under these circumstances, we cannot do so.

Assessing the credibility of witnesses or the weight to be afforded evidence at trial are matters left to the factfinder, who is in the best position to view the witnesses' demeanor and the other verbal and non-verbal cues which may impact on the believability of that testimony. *See Georges v. Government of the V.I.*, 119 F.Supp.2d 514, 523 (D.V.I. App. Div. 2000); *see also United States v. Delorme*, 457 F.2d 156, 160 (3d Cir. 1972). Such determinations by the factfinder are entitled to great deference and will not be disturbed on appeal unless they are "inherently incredible." *Petillo v. New Jersey*, 562 F.2d 903, 907 (3d Cir. 1977); *see also* 29A AM JUR EVIDENCE § 1447. Testimony is deemed inherently incredible or improbable where it is "either so manifestly false that reasonable men ought not to believe it, or it must be shown to be false by objects or things as to the existence and meaning of which reasonable men should not differ." 29A AM JUR § 1447; *see also Hollis v. Scott*, 516 So.2d 576, 578-79 (D.Al. 1987) ("The mere fact that testimony given by a witness in support of an issue is not plausible does not destroy its

probative force. Where, however, the testimony of a witness is incredible, inherently or physically impossible and unbelievable, inherently improbable and irreconcilable with, or contrary to physical facts and common observation and experience, where it is so opposed to all reasonable probabilities as to be manifestly false, or is contrary to the laws of nature or to well-known scientific principles . . . , it is to be disregarded as being without evidentiary value even though uncontradicted.")(citation omitted). While the record reflects Trippett's disagreement with the witnesses' testimony and the conclusions reached by the traffic investigator, we find nothing in the record to support a finding that the traffic investigator's testimony was inherently incredible under these standards.² Accordingly, we will affirm.

III. CONCLUSION

We find the trial court's finding of negligence to be supported by sufficient evidence on the record, and we accordingly affirm.

² Trippett also suggests that the traffic investigator's testimony was improper, as it was unsupported by scientific evidence. However, the officer offered no scientific conclusions, nor gave an expert opinion. His testimony simply recounted the circumstances that led him to discount Trippett's theory of the accident. The appellant has submitted no authority that would require the government to adduce scientific evidence to disprove the defendant's alternative theory of the cause of the accident.

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A T T E S T:

WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

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APPELLATE DIVISION

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Attorneys:

Darwin Carr, Esq.
Attorney for Appellant

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Attorney for Appellee.

ORDER OF THE COURT

PER CURIAM.

AND NOW, for the reasons more fully stated in a Memorandum Opinion of even date, it is hereby

ORDERED that the appellant's conviction is **AFFIRMED**.

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SO ORDERED this 7th day of December, 2004.

A T T E S T:
WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk